

September 24, 2008

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

FOR THE TENTH CIRCUIT

CHRISTOPHER CHASE,

Petitioner - Appellant,

v.

DEPARTMENT OF CORRECTIONS OF
THE STATE OF NEW MEXICO; THE
NEW MEXICO ATTORNEY
GENERAL, GARY K. KING,

Respondents - Appellees.

No. 08-2210
(D.C. No. 1:08-CV-00377-JCH-LCS)
(D. N.M.)

ORDER

Before **TACHA, O'BRIEN**, and **TYMKOVICH**, Circuit Judges.

Christopher Chase filed a notice of appeal in connection with a 28 U.S.C. § 2254 proceeding pending in the U.S. District Court for the District of New Mexico. The notice of appeal was sent to this court and the above-captioned appeal was opened.

The notice of appeal indicates that Mr. Chase is attempting to appeal an order of the district court relating to the handling of certain state court records. However, no final judgment has been entered in the habeas proceeding.

This court issued an order asking Mr. Chase to show any basis for this court to exercise appellate jurisdiction. He has responded, arguing generally that the order relating to the state court record is in fact a final judgment and otherwise asking that the

court accept jurisdiction.

A final judgment order is one that fully ends the litigation on the merits, leaving nothing to decide. 28 U.S.C. § 1291; United States v. Romero, 511 F.3d 1281, 1283 (10th Cir. 2008). The order Mr. Chase is attempting to appeal is not a final judgment. Nor is it one of the limited category of collateral orders in which an interlocutory appeal is permitted as a matter of right. Further, the district court has not certified the order for interlocutory appeal pursuant to either Fed. R. Civ. P. 54(b) or 28 U.S.C. § 1292(b).

Except in limited situations that are not present here, this court's appellate jurisdiction is limited to review of the district court's actions only after a final judgment has been entered. Albright v. UNUM Life Ins. Co. of Am., 59 F.3d 1089, 1092 (10th Cir. 1995).

There having been no final judgment nor immediately appealable order entered as yet, there is no basis for this court to exercise jurisdiction. This attempted appeal is accordingly dismissed, without prejudice to Mr. Chase's right to bring a timely appeal in accordance with the applicable rules and federal law once a final judgment has been entered in the habeas proceeding.

Entered for the Court
ELISABETH A. SHUMAKER
Clerk of Court



by:
Douglas E. Cressler
Chief Deputy Clerk